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PATENT TRADEMARK OFFICE

Serial No. 09/865645
Docket No. 15847-82399

*** * REASONS FOR AMENDMENTS AND REMARKS * ***

Applicants wish to acknowledge with appreciation the Examiner's detailed analysis and efforts in examining this application. A "marked-up" version of the amended portion of the specification and amended claims is submitted concurrently at the end of this section pursuant to 37 C.F.R. § 1.121(c)(1)(iii).

On page 3 of the Official Action, the Examiner has indicated that Claims 16 through 22 are allowable. The Applicant wishes to thank the Examiner for that indication.

On page 2 of the Official Action, the Examiner rejected Claims 1 through 5 and 8 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1 through 7 of U.S. Patent No. 6,324,779.

Applicant submits herewith, a Terminal Disclaimer in compliance with 37 C.F.R. §1.321(c). Accordingly, Applicant respectfully requests that the rejection be withdrawn.

On page 3 of the Official Action, the Examiner rejected Claims 9 through 12 under 35 U.S.C. § 102(b) as being anticipated by Otto (5,265,583). The Examiner alleges that, regarding Claims 9 and 10, Otto discloses a ball ejector machine comprising a body 36 having a directional axis of firing; a firing mechanism 62 attached to the body oriented askew and at an angle non-parallel from the directional axis; and a bore 56 having a breech end in communication with the firing mechanism. The Examiner further alleges that, although Otto does not disclose a paint ball gun, the positive limitations of the application are disclosed in the patent.

Claim 9, as amended, positively recites the limitation of a "paint ball" firing mechanism. As the Examiner determined, the Otto reference, discloses a ball ejector. Though little disclosure of Otto's firing mechanism is provided, it does explain that the ball ejector is



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configured to shoot tennis balls. (See Otto, column 1, lines 46 through 68, for example.) The disclosure of the present application is directed to a marking gun, like a paint ball gun, comprising a firing mechanism that propels generally frangible objects which are quite distinguishable from non-frangible tennis balls.

Accordingly, since Otto does not include all the positively claimed limitations of Claim 9, it cannot anticipate same. Withdrawal of the rejection of Claim 9 under 35 U.S.C. § 102(a) is, therefore, respectfully requested. And consequently, because rejected Claims 10 through 15 are dependent on Claim 9, withdrawal of the rejection of Claims 10 through 15 is respectfully requested as well.

Specifically, regarding Claim 11, the Examiner alleges that Otto discloses the claimed invention wherein the ball exits the firing mechanism in a direction that is non-parallel to the directional axis of firing. Because it appears that any firing mechanism for the ejector 14 is located below housing 22, no significant disclosure is provided with regard to the firing mechanism, particularly, the orientation of the firing mechanism with respect to the barrel 56.

Specifically regarding Claim 12, the Examiner alleges that Otto discloses the claimed invention wherein the muzzle end is located above the axis of firing. With respect, this rejection appears moot in view of the amendments to Claim 9.

If, upon consideration of the above, the Examiner should feel that there remain outstanding issues in the present application that could be resolved, the Examiner is invited to contact Applicant's patent counsel at the telephone number given below to discuss such issues.

To the extent necessary, a petition for an extension of time under 37 C.F.R. §1.136 is hereby made. To the extent additional fees are required, please charge the fees due in



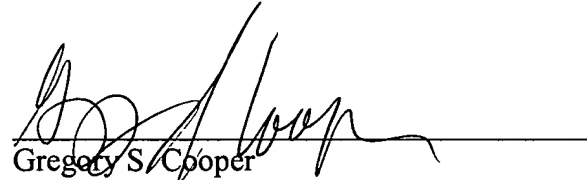
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connection with the filing of this paper, including extension of time fees, to Deposit Account No. 02-1010 (15847/82399) and please credit any excess fees to such deposit account.

Respectfully submitted,



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**MARKED-UP VERSION OF SPECIFICATION
IN AMENDMENT TO U.S. PATENT APPLICATION NO. 09/865645
ATTORNEY DOCKET NO. 15847-82399**

1. Please replace the paragraph beginning on page 2, line 3, as follows:

The present application is a continuation-in-part application of United States Patent Application Serial No. 09/333,083, filed June [4] 14, 1999, the complete disclosure of which is hereby expressly incorporated by reference.



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**MARKED-UP VERSION OF REWRITTEN CLAIMS
IN AMENDMENT TO U.S. PATENT APPLICATION NO. 09/865645
ATTORNEY DOCKET NO. 15847-82399**

Please amend Claims 9, 10, 11, and 13, as follows:

9. (Amended) A paint ball gun configured to fire a paint ball, the paint ball gun comprising:

a body having a directional axis of firing;

a **paint ball** firing mechanism attached to the body oriented askew from the directional axis; and

a bore having a breech end that is in communication with the firing mechanism.

10. (Amended) A paint ball gun configured to fire a paint ball, the paint ball gun comprising:

a body having a directional axis of firing;

a longitudinally extending **paint ball** firing mechanism attached to the body and oriented at an angle non-parallel to the directional axis of firing;

a bore having a breech end that is in communication with the firing mechanism.

11. (Amended) The paint ball gun of Claim 10, wherein the paint ball exits the **paint ball** firing mechanism in a direction that is non-parallel to the directional axis of firing.

13. (Amended) The paint ball gun of Claim 12, wherein the muzzle end of the bore is positioned relative to the **paint ball** firing mechanism to allow the paint ball to exit the bore in a direction generally parallel to the directional axis of firing.